IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 556 OF 2001

M/s.Sai Marketing Agency, Pune. ... Appellant.

Versus.

Ajay Dnyaneshwar, Mhase. ... Respondent.

Shri R.N.Sanghavi for the Appellant.

CORAM : ABHAY S. OKA, J.

DATED : 3rd February, 2005.

P.C.:

1. The Appeal is by the unsuccessful Defendants for challenging the money decree which is passed on negotiable instruments.

2. The learned Counsel for the Appellant submitted that the trial Court committed an error by allowing the Application made by the Respondent/Plaintiff seeking permission to lead secondary evidence of Hundies in the form of zerox copies thereof. He submitted that the presumption under section 118 of the Negotiable Instruments Act stands rebutted as the evidence of the Respondent/Plaintiff itself shows that no work was carried out by him.

3. In so far as the first contention is concerned, the learned trial Judge has observed that the application at Exhibit 30 was made by the Respondent seeking permission to lead secondary evidence. The said application was

granted. I find from the Memorandum of Appeal filed in the District Court that there was no specific challenge to the order passed by the learned trial Judge below application at Exh.30. However, in paragraphs 2, 3 and 4 of the Judgment of the Appellate Court, the contention of the Appellant has been examined and the learned Appellate Court has negatived the said contention by observing that the signing of the hundies by the Appellant is an admitted fact and no objection was raised by the Appellants during the recording of evidence for exhibiting the zerox copies of the Hundies.

4. So far as the second contention is concerned, after having considered the oral evidence on record, both the Courts have come to the conclusion that the presumption under section 118 has not been rebutted. The learned Counsel for the Appellant has taken me through the notes of evidence of the original Plaintiff. I find that no such clear admission is given by the original Plaintiff that no work was carried out. In any event there are concurrent findings of fact on this aspect.

5. The learned Counsel further submitted that the noting and protesting has not been done by the original Plaintiff and no notice of protest was given to the Appellant. I find that the Appellate Court has considered the relevant provisions of of the Negotiable Instruments Act and has rightly observed that the said

provisions are not mandatory.

6. No substantial question of law arises in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.